Docket No.: 29827/40333
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Samantha Champ et al.

Application No.: 10/502,212 | Confirmation No.: 1830

Filed: July 20, 2004 | Art Unit: 1711

For: Foams Made from Water-Absorbing, Basic Polymers, Method for the Production and Utilization Thereof | Examiner: John M. Cooney

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This reply brief is submitted to respond to points of argument and to correct erroneous statements made in the Examiner's Answer dated July 29, 2008 to appellants' Appeal Brief.

(1) At page 5 of the Examiner's Answer, the examiner states that "[T]hough appellants may disclose basic polymers that are free of acid monomers, the disclosure does not provide support for the elements that are now implied to be permissibly included." The examiner therefore admits that appellants disclose basic polymers that are free of acid monomers. If the specification contains fifteen examples of a foam containing a basic polymer free of monomers, how can this be new matter? As fully set forth in the Appeal Brief at pages 14-17, the specification clearly demonstrates that appellants possessed the presently claimed subject matter at the time of filing the application.

(2) The examiner, at page 6 of the Examiner's Answer, contends that the phrase in the specification stating "the comonomers are preferably free of acid groups" is

appellants sole support for the claimed feature of a basic polymer free of acid groups. As stated above, this is *not* the sole support for the recitation in the claims. The examiner is directed to Examples 1-15, *all* the examples in the application. Appellants further submit that contrary to the examiner's contention, a recitation that "comonomers are preferably free of acid groups" does support present recitation in the claims, i.e., if an optional comonomer is present, it is free of acid groups. The extrapolation questioned by the examiner is clearly in *fifteen* examples, which show the equivalence between the present disclosure and the feature now recited in the claims.

(3) At page 6 of the Examiner's Answer, the examiner still maintains that substitution of the polymer system of WO '295 into the preparation of WO '648 is within the skill of the art. The substantial differences between the present claims and a combination of WO '295 and WO '648 are fully set forth in the Appeal Brief with respect to this contention by the examiner. Appellants previously stated that using the polymer system of WO '295 in the preparation of WO '648 *would not* work. First, WO '648 teaches the preparation of a foam by polymerizing monomers. WO '295 discloses a blend of acidic and basic polymers. So there is nothing to polymerize, no monomers are present Second, if the polymer blend of WO '295 was subjected to the preparation of WO '648, or even a modification thereof, *no* foam would result. Both polymers of WO '295 are already crosslinked. By using the crosslinked polymers in the method of WO '648, *no* mechanism exists for the mixture of WO '295 to provide a foam, i.e., neither the blend nor either component thereof can be solubilized, polymerized, or crosslinked to provide a foam. See Appeal Brief, pages 25 and 26. The case law cited by the examiner specifically states that substitution of equivalents would have been obvious "motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances." In this case, the substitution suggested by the examiner will not work at all. Further, a combination of WO '295 and WO '648 requires substantial jumps in reasoning and substantial modifications to even arguably to arrive at the present invention. These jumps in reasoning and modifications are not suggested in the cited art. To position the rejection as a simple substitution is incorrect.

(4) The examiner relies upon a blend of acidic and basic polymers as being useful in absorbent articles to support the obviousness rejection. First, an acidic polymer is

an optional ingredient in the claimed foam. Second, the examiner is not considering the appellants' invention, i.e., forming a foam from a basic *polymer* containing *no* acid groups. WO '295 fails to disclose foams at all. WO '648 discloses foams prepared from *acidic* monomers, and fails to teach or suggest preparing foams from a *basic* polymer or a basic monomer. A reference teaching a blend of an acidic polymer and a basic polymer may be a properly cited reference because it is in the field of superabsorbent polymers and absorbent articles. But *this* reference (WO '295) fails to teach or suggest the claimed invention, even if combined with WO '648.

(5) The examiner's statement that the differences in crosslinking between the cited reference and the present claims is not evident is incorrect. WO '648 teaches internal crosslinking of acidic monomers by a polymerization reaction via C-C double bonds. WO '295 also teaches internal crosslinking to form the acidic and basic polymers. The basic *polymers* of the present claims can only crosslink via pendant amino groups. The C-C double bonds are already consumed. This difference in crosslinking is perfectly evident to persons skilled in the art because an already formed polymer can only be crosslinked through pendant groups. The examiner also incorrectly represents crosslinking of the basic polymer of WO '295. The basic polymer of WO '295 is already internally crosslinked so there is no need to crosslink the polymer via pendant groups.

(6) The examiner contends that appellants have not identified differences in the product of the claimed process *vis-à-vis* the cited art. Appellants clearly demonstrated the differences at pages 29 and 30 of appellants' Appeal Brief.

In summary, it is submitted that the examiner's final rejection of claims 1-10 and 12-17 should be reversed.

Dated: September 18, 2008

Respectfully submitted,

By _____

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